



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CONSTITUTIONAL AND HUMAN RIGHTS DIVISION**

**PETITION NO. 241 OF 2019**

**IN THE MATTER OF ARTICLES 2, 3, 10, 19, 20, 21, 22, 23, 165 AND 259 OF THE CONSTITUTION OF THE REPUBLIC OF KENYA**

**AND**

**IN THE MATTER OF CONTRAVENTION OF FUNDAMENTAL RIGHTS AND FREEDOMS UNDER ARTICLES 10, 25(a), 27, 29(d), 36, 40, 43, 48 AND 50 OF THE CONSTITUTION OF KENYA**

**AND**

**IN THE MATTER OF KENYA SCHOOL OF LAW ACT (NO.26 OF 2012) LAWS OF KENYA**

**AND**

**IN THE MATTER OF COUNCIL OF LEGAL EDUCATION ACT (NO.27 OF 2012) LAWS OF KENYA**

**AND**

**IN THE MATTER OF ARTICLES 2, 7, 8, 22, AND 26 OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS**

**AND**

**IN THE MATTER OF ARTICLES 2, 3, 6 AND 13 OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS**

**AND**

**IN THE MATTER OF ARTICLES 2, 3, 17 AND 22 OF THE AFRICAN (BANJUL) CHARTER ON HUMAN AND PEOPLES RIGHTS**

**AND**

**IN THE MATTER OF CONTRAVENTION OF RIGHTS AND EDUCATION, EQUALITY AND FREEDOM FROM DISCRIMINATION, HUMAN DIGNITY AND RIGHT TO FAIR ADMINISTRATIVE ACTION**

**BETWEEN**

**WOLLACE MAINA GATUNDU.....PETITIONER**

**VERSUS**

**COUNCIL OF LEGAL EDUCATION.....1<sup>ST</sup> RESPONDENT**

**THE KENYA SCHOOL OF LAW.....2<sup>ND</sup> RESPONDENT**

**THE HONOURABLE ATTORNEY GENERAL..3<sup>RD</sup> RESPONDENT**

## JUDGMENT

### **Introduction:**

1. The Petitioner through a Petition dated 20<sup>th</sup> June 2019 seeks the following reliefs:-

- a) A declaratory order do issue declaring that the Petitioner has been discriminated by the Respondents and thus violating, denying and breaching his right not to be discriminated enshrined under Article 27 of the Constitution of Kenya, 2010.*
- b) A declaratory order do issue declaring that the Petitioner's rights and fundamental freedoms enshrined under Articles 10, 25(a), 28, 27, 40, 43(10) (f), 47, 48 and 50 of the Constitution of Kenya have been denied and violated by the Respondents.*
- c) A declaratory order do issue that the Respondents have violated the Petitioner's right to education, right to be heard and freedom from discrimination.*
- d) An order do issue in the nature of certiorari to bring before court for purpose of quashing the decision of the 1<sup>st</sup> Respondent contained its letter dated 4<sup>th</sup> March 2019.*
- e) An order do issue in the nature of mandamus to compel the 1<sup>st</sup> & 2<sup>nd</sup> Respondent to unconditionally admit the Petitioner for Advocates Training Programme for 2020/2021 academic year*
- f) Declaration that the Petitioner's qualifications for admission for ATP is only subject to the provisions of the law and Regulations which existed at the time of his admission and completion of his LL.B program and for avoidance of doubt Council of Legal Education Act, Cap 16A and THE COUNCIL OF LEGAL EDUCATION (KENYA SCHOOL OF LAW) REGULATIONS, 2009(Legal Notice No.169 of 2009).*
- g) An order for General damages as against the 1<sup>st</sup> Respondent for subjecting the Petitioner to psychological torture, anguish, suffering, mental torture and breach of the Petitioner's constitutional rights and fundamental freedoms and loss of opportunities.*
- h) An award of exemplary damages to the Petitioner for violation and breach of his constitutional rights and fundamental freedoms.*
- i) Costs of this Petition*
- j) Any other such orders as this Honourable Court shall deem just to grant.*

### **Petitioner's Case:**

2. The Petitioner joined Busoga University sometimes in October 2006 to pursue Bachelor of Laws (LL.B) degree programme and successfully completed and was awarded Bachelor of Laws, degree on 30<sup>th</sup> September 2011.

3. The Petitioner contend prior to joining Busoga University he held post O -Level qualification which qualified him for the said admission. The Petitioner had commenced his LL.B degree before enactment and coming into force of the legislation of Kenya School of Law Act 2012 and amendments thereto.

4. The petitioner aver, that the 2<sup>nd</sup> Respondent admitted him to sit for pre-bar examination in the year 2010 and 2019 as a pre-condition for admission as he did not have a direct admission for the Advocates Training Programme pursuant to Part III 5(d) of the Council of Legal Education (Kenya School of Law) Regulation 2009 Legal Notice no.169 of 2009) which were in force at, the time the Petitioner passed and became a potential candidate for advocates Training programme (ATP) for academic year 2019/2020. The Petitioner subsequently applied for ATP for 2019/2020 academic year but his application was refused by 2<sup>nd</sup> Respondent claiming that he never attached a clearance letter from the 1<sup>st</sup> Respondent.

5. The Petitioner applied to the 1<sup>st</sup> Respondent for clearance of his LL.B qualification but the 1<sup>st</sup> Respondent declined to approve and clear Petitioner's qualifications by alleging that:

- a) The Petitioner had not attained the minimum entry of either a B plain in English or Swahili in Kenya Certificate of Secondary Education (KCSE) and had not shown any progression from Diploma in law or at least two (2) Principal passes at "A" Level or 1B qualification to undertaking the Bachelor of Laws (LL.B) programme and*
- b) That at the time of Petitioner's admission and completion of his LL.B programme, Busoga University had not been granted full accreditation but interim accreditation.*

6. The Petitioner avers that the 1<sup>st</sup> Respondent is violating his right to education and freedom from discrimination by failing to admit him having yet for pre-bar examination and having admitted previously students from Busoga University. The Petitioner further contend he had a legitimate expectation that the Respondents would treat him like his classmates from his alma mater.

### **The 1<sup>st</sup> Respondents' Case:**

7. The 1<sup>st</sup> Respondents is opposed to the Petitioners petition and in doing so filed grounds of opposition being as follows:

*1) having passed the relevant examination of any recognized university in Kenya, he holds, or has become eligible for the conferment of a degree in law of that university or*

*2) having passed the relevant examination of a university, university college or other institution prescribed by the council, he holds or has become eligible for the conferment of a degree in law in the grant of that university, university college or other institution, and had prior to enrolling at that university, university college or other institution –*

*i) attained the minimum entry requirements for admission to a public university in Kenya; and*

*ii) obtained a minimum grade of B (plain) in English language in the Kenya Certificate of Secondary Examination or its equivalent*

*Provided that the Council may, at its discretion, require a person to pass an English Language test or any other test approved by the Council as a pre-condition to admission, or*

*iii) he possesses any other qualification which are acceptable to and recognized by the council.*

*3) Article 27 of the constitution does not prohibit discrimination it prohibits unfair discrimination and the burden of proving unfair discrimination lies wholly with he who alleges.*

*4) Legitimate expectation cannot exist against and/or override the clear and express provisions of Statute and the Law.*

### **The 3<sup>rd</sup> Respondents' Case:**

8. The 3<sup>rd</sup> Respondent is opposed to the petition and in doing so filed grounds of opposition dated 29<sup>th</sup> July 2019 opposing the Petition stating inter alia; that the Petitioner is relying on the provisions of Part III 5(d) of the Council of legal Education (Kenya School of Law) Regulation, 2009 (Legal Notice no. 169 of 2009) which has so far been repealed by the Kenya School of Law Act of 2012. It is further 3<sup>rd</sup> Respondent's contention that the Petitioner do not meet admission requirements under the second schedule of the law Kenya School of Law Act of 2012. It is contended also that the Petitioner graduated from Busoga University on 30<sup>th</sup> September 2011 and could therefore have commenced his studies at Kenya School of Law in 2012 when Kenya School of Law Act was allegedly in place.

### **Analysis and Determination:**

9. I have very carefully considered the Petition, affidavit in support and annexures thereto, the grounds of opposition by 1<sup>st</sup> Respondents and responses by the third respondent as well as the partes written submissions and oral submissions. From the aforesaid the following issues arises for consideration:-

a) Whether the Petitioner had met the threshold to pursue LL.B programme and subsequently the ATP programme?

b) Whether the 1<sup>st</sup> Respondent, decision of refusal to grant clearance to the Petitioner constituted unlawful discrimination against the petitioner?

c) Whether the Respondents infringed on the petitioner's legitimate expectation?

#### **A. Whether the Petitioner had met the threshold to pursue LL.B programme and subsequently the ATP programme?**

10. The Petitioner as per his Kenya Certificate of Secondary Education (KSCE) annexure WMG-2 had a mean Grade B- (Minus) with B- in English and B- in Kiswahili. He joined Busoga University in October 2006 to pursue Bachelor of Laws (LL.B) degree programme. The Petitioner has attached his LL.B degree (WMG-1) together with the Academic transcript.

11. The 1<sup>st</sup> Respondent herein is established under section 4 of the Legal Education Act (No.27 of 2012) with general functions being enumerated in Section 8 as including; inter alia...

a) Regulation of Legal Education and Training in Kenya offered by Education providers

b) Licensing legal education providers

c) Supervising legal education providers

d) Advising the government on matters relating to legal education and training.

e) Recognizing and approving qualifications obtained outside Kenya for purposes of admission to the Roll and

f) Administering such professional examinations as may be prescribed under section 13 of the Advocates Act.

12. There is no dispute in this matter that the admissibility of a prospective student to a university to pursue any programme offered by a particular university lies solely with the particular university based on the admission rules and regulation. However it is the sole responsibility for the 1<sup>st</sup> Respondent herein to recognize and approve qualifications obtained outside Kenya for purposes of admission to the ATP programme. The petitioner herein was admitted to Busoga University in 2007 to pursue LL.B degree. Prior to the admission the petitioner had not attained minimum entry of either a B (plain) in English or Swahili in KCSE and had not shown progression from Diploma in law or at least two (2) principal passes at "A" level or 1(B) qualification prior to taking Bachelor of Laws (LL.B) programme.

13. The 1<sup>st</sup> Respondent in refusing to grant the Petitioner clearance, it implemented the substance of section 16 as read together with the second schedule to Kenya School of Law Act No. 26 of 2012 and Regulation 7 of the legal Education (Accreditation and Quality Assurance) Regulation 2016 and substance of Section 8(1) (c) and (e) of the Legal Education Act No.27 of 2012. In the instant Petition the petitioner joined the Busoga University in October 2006 and completed his LL.B degree in 2011. The law can not apply retrospectively and as such, the law that would apply would be the law that existed at the time the petitioner was admitted to undertake his undergraduate studies at Busoga University in October 2006. The guiding law in this instance would be the Council of Legal Education Act No.12 of 1999 and the Advocates (Admission) Regulation, 1997 at Part III Regulations. However the Advocates (Admission) Regulation 1997, was revoked through Legal Notice No.357 of 1997.

14. In view of the Advocate (Admission) Regulation 1997 having been revoked and the 2<sup>nd</sup> Respondent having in September 2018 advertised both on its website and in newspapers calling for application from qualified prospective students for admission into the Advocates Training Programme (ATP) for academic year 2019 / 2020 and the advertisement having laid down two eligibility criteria for prospective applicants as follows: -

a) The first criteria applied to persons who had been admitted into Bachelor of Laws degree Programme from 8<sup>th</sup> December 2014

b) The second one applied to those who were admitted into LL.B programme before 8<sup>th</sup> December 2014. The Petitioner hence having been admitted to Busoga University for LL.B degree programme during 2006 / 2007 Academic year fell within the second eligibility criteria.

15. The category under which the petitioner fell the minimum admissibility requirements were under clause "d" in which a student was required to have Bachelor of Laws degree (LL.B) from recognized University and had minimum grade of C (minus) in English and a minimum of aggregate grade of C (minus) in KCSE. There was a requirement to sit and pass the pre-bar examination set by the Kenya School of Law as a pre-condition for admission.

16. The Petitioner therefore contend the law that will apply in his case is the law that was existing at the time of is admission and graduation at the university then as he did not have a direct admission to the ATP programme. Thus Part III 5(d) of the Council of Legal Education (Kenya School of Law) Regulation 2009 (Legal notice 169 of 2007 in which it is provided.

***"A person shall be admitted to the School if -***

***a) Having passed relevant examination of any recognized university in Kenya, he holds, or has become eligible for the conferment of a degree in law of that university; or***

***b) Having passed the relevant examination of a university, university college or other institution prescribed by the Council, he hold or has become eligible for the conferment of a degree in law in the grant of that university, university college or other institution and had prior to enrolling at that university or other institution –***

***i) Attained the minimum entry requirements for admission to a public university in Kenya; and***

***ii) Obtained a minimum grade of B (plain) in English Language in the Kenya Certificate of Secondary Examination or its equivalent.***

***Provided that the Council may, at its discretion, require a person to pass an English Language test or any other test approved by the Council as a pre-condition to admission, or***

***c) He possesses any other qualification which are acceptable to and recognized by the Council***

17. From the provisions of Part III, 5(d) of the Council of Legal Education (Kenya School of Law) Regulations 2009, (Legal Notice No. 169 of 2009) it appears to me that there are at least two categories under which prospective students for ATP programme can gain entry to the Kenya School of law. First there is direct entry for those who qualifying under Part II 5(a), (b) and (c) and secondly there is the indirect entry in which the prospective students for ATP programme, have sat and passed the pre-bar examination set by the Council of Legal Education as a pre-condition for admission.

18. In the instant Petition, the Petitioner has demonstrated that the 2<sup>nd</sup> Respondent allowed him to sit for pre-bar examination and passed as per letter from the Respondent dated 25<sup>th</sup> November 2010 (WMG – 3) addressed to the Petitioner as follows:

***“Results of the Pre-Bar Examination for Law Graduates January 2019,***

***Refer to the Pre-bar examination for law graduates which you sat.***

***I am happy to inform you that the results of the said examination are now out and you were recorded to have “passed” the examination. Congratulations on your achievement.***

***Thank you.***

***Yours sincerely***

***Dr. Henry K. Mutai***

***Director/Chief Executive Officer”***

19. The Petitioner sought clearance from the 1<sup>st</sup> Respondent which was denied on the following grounds:

***a) That he had not attained minimum entry of either a B plain in English or Swahili in Kenya Certificate of Secondary Education (K.C.S.E) and has not shown any progression from Diploma in law or at least two (2) principal passes at “A” level or 1B qualifications prior to undertaking the Bachelor of Laws (LL.B) Programme; and***

***b) That at the time of admission and completion of my LL.B programme, Busoga University, the university had not been granted full accreditation but interim accreditation.***

20. From Part II of the Council of legal Education (Kenya School of Law) Regulation 2009 (legal Notice no. 169 of 2009) the qualification for admission to ATP programme are clearly spelt into various categories which are in variance. In the direct entry one is required to have a minimum qualification which include either B (Plain) in English or Swahili in KCSE or Diploma in Law or at least with two principal pass at “A” level or 1B qualification prior to undertaking of LL.B programme. The other category is clearly spelt in Part III 5(d) of the Council of Legal Education (Kenya School of Law) Regulation, 2009 (Legal Notice No. 169 of 2009); which fortified the Petitioner’s Academic deficiency when he sat the pre-bar examination and passed as confirmed by the 2<sup>nd</sup> Respondent by a letter dated 25<sup>th</sup> November 2010 (annexture WMG – 3).

21. From the above I find that the Petitioner has demonstrated that he met the threshold to pursue LL.B programme and subsequently the ATP programme.

***B. Whether the 1<sup>st</sup> Respondent, decision of refusal to grant clearance to the Petitioner constituted unlawful discrimination against the petitioner?***

22. The Petitioner contention is that he is unfairly discriminated by the 1<sup>st</sup> Respondent by refusing to clear and approve his qualifications when his co-students and classmates from the same university and same class were cleared to undertake ATP by the 1<sup>st</sup> Respondent and have since been admitted to the bar as advocates of the High Court of Kenya through the following Roll numbers:

***a) “Charles Mwalimu Mathuva P.105/10985/14;***

***b) Rakewa Francis Otieno P.105/9439/12;***

***c) Okanda Leonard Otieno P.105/9470/12;***

***d) Okolla Hellen Ngessa P.105/9422/12***

***e) Musembi Purity Mbatha P.105/10033/13***

***f) Kasyoka Stephen Syano P.10585/14”***

23. For the definition of discrimination “the Black Law Dictionary, 10<sup>th</sup> Edition at page 566 “*discrimination*” is deferred as follows –

***1. The intellectual faculty of noting differences and similarities.***

***2. The effect of a law or established practice that confers privileges on a certain class or that denies privileges to a certain class because of race, age, sex, nationality, religion, or disability.***

24. It is Petitioner’s contention that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents have been clearing and admitting former students of Busoga University for the purposes of ATP Training; many of whom have graduated before the Petitioner and are now practicing as Advocates of the High Court. It is submitted that the 1<sup>st</sup> Respondent in denying the Petitioner the same treatment as other graduates of Busoga University is tantamount to differential treatment being afforded to one group of people against another when there is practically no reasonable difference and

explanation which can be demonstrated between those who are favoured vis-avis those who are not favored. I find in a situation of such differential treatment, no doubt, constitutes an unfair discrimination by the 1<sup>st</sup> Respond against the Petitioner.

25. In the instant Petition the 1<sup>st</sup> Respondent has not given any reasonable difference and explanation for the action of denying the petitioner clearance certificate nor has it filed an affidavit controverting the averments by the Petitioner. I accordingly find that the differential treatment that the 1<sup>st</sup> Respondent gave the petitioner served to disentitle him to equal protection and benefit of the law in complete violation of the express obligations of Article 27 (1) of the Constitution of Kenya 2010.

26. The 1<sup>st</sup> Respondent relied on Busoga University's alleged lack of accreditation as the basis for the refusal of the Petitioner's application for clearance to pursue ATP Training; however it is not denied that the Petitioner's six (6) college mates named herein above with whom he studied and graduated from Busoga University on the same day, have all been previously cleared and admitted to 2<sup>nd</sup> Respondent's ATP Training. I find as a result of the 1<sup>st</sup> Respondent treating, each of the six (6) colleagues of the Petitioner differently, it cannot factually be possible that the Petitioner's application for clearance to pursue ATP training at the 2<sup>nd</sup> Respondent institution can be denied on the basis of Busoga University, alleged lack of accreditation during the period when the Petitioner pursued his Bachelor of Laws (LL.B) degree course at the said university, yet his former colleagues with whom he studied at the same time, and graduated within the same date, could not have been denied the same clearance on the same basis. I find if the 1<sup>st</sup> Respondent intended to rely on the arguments that Busoga University lacked the said accreditation, thus was without capacity to offer the Bachelor of Laws (LL.B) degree course, then the 1<sup>st</sup> Respondent should have applied the law equally to every person who graduated from the said university with a Bachelor of Laws (LL.B) degree during the period when the university is alleged not to have had requisite accreditation.

27. In *John Harun Mwaui Vs. IEBC & Another (2013) eKLR*, the Court while interpreting Article 27(1) of the Constitution, stated that it must be clear that a person alleging a violation of Article 27 of the Constitution has to establish that because of the distinction made between the claimant and the others, the claimant has been denied equal protection or benefit of the law.

28. In the instant Petition, I find that the petitioner has demonstrated, that the 1<sup>st</sup> Respondent created a distinction between the petitioner and his former colleagues and as a result he has been denied the equal protection and equal benefit of the law by the 1<sup>st</sup> Respondent. I find that subjecting a person on whom a benefit had been conferred to a particular form of treatment deferent from others who fall in the same class clearly that amounts to discrimination (see *John Kabul Mwai & 3 Others vs. Kenya National Examination Council & 2 Others (2011) eKLR*).

29. The Petitioner further relies on an affidavit of his former co-student one Charles Mathuva Mwalimu an holder of LL.B degree form Busoga University who has since been admitted as an Advocate of the High Court of Kenya, together with others in the Petitioner's class namely: -Rakewa Otieno Francis P 105/94701/12; Otieno Okanda Leonard P 105/94391/12; Hellen Ngessa Okolla P 105/9422/12; Purity Musembi P 105/10033/12, Charles Mathuva P.105/10985/14 and Kasyoka Stephen Syano P105/9561/12 after being cleared by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to undertake ATP in 2011/2012 academic year. The aforesaid advocates and the petitioner were in the Busoga University, same class and graduated on the same day. The contents of the affidavit of Charles Mathuva Mwalimu have not been challenged by the Respondents. I find from the averments by Charles Mathuva Mwalimu, that it is evidently clear that the 1<sup>st</sup> Respondent discriminated the petitioner by treating him differently from other students from the same university and same class. The refusal to clear the petitioner to join ATP is in view of the above discriminatory.

30. Article 24(1)(a) – (e) of the Constitution 2010 provides: -

***Limitation of rights and fundamental freedoms -***

***(1) A right or fundamental freedom in the Bill of Rights shall not be limited except by law, and then only to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including***

***a) the nature of the right or fundamental freedom***

***b) the nature and extent of the limitation;***

***c) the importance of the purpose of the limitation***

***d) the need to ensure that the enjoyment of rights and fundamental freedoms by any individual does not prejudice the rights and fundamental freedoms of others; and***

***e) the relation between the limitation and its purpose and whether there are less restrictive means to achieve the purpose.***

31. The burden of proof that there is limitation on a fundamental rights on freedom lies with the state or authority. The burden of proving that the limitation is justifiable in an open and democratic society based in human dignity, equality and freedom rests on the state or the authority limiting the fundamental right or freedom. In the case of *Lyomoki and others Vs. Attorney General (2005) 2 EA 127*, the principles of constitutional interpretation are that firstly, the onus is on the petitioners to show a *prima facie* case of violation of their constitutional rights. Thereafter the burden shifts to the Respondents to justify that the limitations to the freedom from discrimination in the impugned decision is justified.

32. In the instant petition, it is clear that the Respondents have not made any attempts whatsoever on justifying that the petitioner was subjected to different treatments from his former co-students as the 1<sup>st</sup> Respondent in rejecting to issue clearance mainly started through its

letter of 4<sup>th</sup> March 2019 that the Petitioner did not qualify. The 1<sup>st</sup> Respondent failed to demonstrate in light of previous treatments of students who undertook similar courses as the petitioner, at the same period and from same university, that the decision being challenged herein, of a differentiation that bears a rational connection of legitimate purpose.

33. From the above and all my findings, I find that the petitioner has demonstrated that the 1<sup>st</sup> Respondent's refusal to issue the petitioner herein with clearance to allow him to enroll for the ATP training at the 2<sup>nd</sup> Respondent institution constituted a negation of the constitutional principles and obligations embedded under Article 10 of the Constitution of Kenya 2010 as well as the Rules of Natural Justice since the said action discriminated against the petitioner, however and only favoured some of his co-classmates from the same university.

### C. Whether the Respondents infringed on the petitioner's legitimate expectation?

34. The petitioner contention is that in the light of the treatment accorded at his former co-students, he had legitimate expectation that he would be accorded similar treatment.

35. In the case of **Kevin K. Mwiti & Others Vs. Kenya School of Law & Others (2015) eKLR**, the court cited with approval the definition of legitimate expectation as stated in **De Smith, Woolf & Jorrell**, in "**Judicial Review Administrative Action**", 6<sup>th</sup> Edition, **Sweet and Maxwell page 609**, which states thus ;

*"A legitimate expectation arises where a person responsible for taking a decision has induced in someone a reasonable expectation that he will receive or retain a benefit of advantage. It is a basic principle of fairness that legitimate expectations ought not to be thwarted. The protection of legitimate expectations is at the root of the constitutional principle of the rule of law, which requires predictability and certainty in government's dealings with the public."*

36. The doctrine has been adopted and applied by the Courts in various cases, the requirements for successful reliance on the doctrine were however well articulated by the Court of Appeal in the cases of **Oindi Zarpeline 39 others -v- Karatina University & Anothr [2015] eKLR** and even more clearly by the Supreme Court in **Communications Commissions of Kenya & 5 Others -vs- Royal Media Services Ltd and 5 Others Petition No. 14 of 2014**. In the **Royal Media services' case** the court stated as follows at paragraph 269 that the emerging principles on legitimate expectation may be succinctly set out as follows:

*a. There must be an express, clear and unambiguous promise given by a public authority;*

*b. The expectation itself must be reasonable;*

*c. The representation must be one which was competent and lawful for the decision-maker to make; and*

*d. There cannot be a legitimate expectation against clear provision of the law or the constitution.*

37. In **R (Bibi) vs. Newham London Borough Council 2001 EWCA CIV 607**, it was held;

*"Unless there are reasons recognized by law for not giving effect to those legitimate expectations then effect should be given to them. In circumstances as the present where the conduct of the Authority has given rise to a legitimate expectation then fairness requires that, if the Authority decides not to give effect to that expectation, the Authority articulates its reasons so that their propriety may be tested by the court if that is what the disappointed person requires."*

38. Further in **Mohammed Abduba Dida v Debate media Limited & Another [2017] eKLR**, the court held that unequal treatment is not discrimination in the following words;

*"In our view, mere differentiation or inequality of treatment does not per se amount to discrimination within the prohibition of the equal protection clause. To attract the operation of the clause, it is necessary to show that the selection or differentiation is unreasonable or arbitrary, that it does not rest on any basis having regard to the objective the legislature had in view or which the Constitution had in view. An equal protection is not violated if the exception which is made is required to be made by some other provisions of the Constitution. We think and state here that it is not possible to exhaust the circumstances or criteria which may afford a reasonable basis for classification in all cases"*

39. In the Instant petition, it is clear that the 1<sup>st</sup> respondent decision to decline to clear and approve the Petitioners qualifications on the grounds his university was not accredited to offer LL.B degree while it approved other students' qualification in the same university and class with the petitioner clearly amounted to unjustifiable discrimination and was arbitrary.

40. The Petitioner herein had legitimate expectation that upon completion of his Bachelor of Laws (LL.B) degree studies in Busoga University, he would have this chance and opportunity to proceed for his ATP training at the 2<sup>nd</sup> Respondent institution, thus Kenya School of Law. The petitioner's expectation was not without clear basis. It is clear from the fact that all his Kenyan colleague students who graduated ahead of him from Busoga University were granted clearance by the 1<sup>st</sup> Respondent herein and were admitted into the 2<sup>nd</sup> Respondent institution to pursue the said ATP training. Further his own classmates were also granted clearance by 1<sup>st</sup> Respondent and studied at the 2<sup>nd</sup> Respondent institution and some of them are today Advocates of the High court of Kenya. The Petitioner has given his classmates names and one of them have filed an affidavit in support of the petitioner's petition.

41. I find in the instant petition, the 1<sup>st</sup> Respondent having not denied having granted clearance to students mentioned by the Petitioner and who enrolled and graduated without Bachelor of Laws (LL.B) degree from Busoga University earlier than the Petitioner, the Respondents no doubt, made the petitioner herein have legitimate expectations, that he, upon conclusion of his Bachelor of Laws degree from the same institution, he would also be granted the same clearance by the 1<sup>st</sup> Respondent to enable him pursue his ATP Training from the 2<sup>nd</sup> Respondent institution like those who had graduated earlier than him. I find that where there are valid ground for legitimate expectations, such expectations have to be met unless the party with the obligation is meet the same procedurally without the basis.

42. In the case of **Monica Wambui Ng'ang'a & Others Vs. Council of Legal Education & 4 Others (2017) eLKR** this Court at Past 84 held

***“In light of treatment accorded to the past students of the universities, I agree that the petitioners had legitimate expectations that they would be accorded a similar treatment.”***

43. From the above, I am satisfied that in this petitioner, the 1<sup>st</sup> Respondent’s treatment of the petitioner as regard refusal to issue him clearance for petitioner to join ATP Training, the 1<sup>st</sup> Respondent did not only violate the petitioner’s legitimate expectations but it also violated the process provisions of **Article 47(i) of the Constitution of Kenya 2010** which gives the petitioner right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair. This requirement is reiterated under **section 4 of the Fair Administration Actions Act 2015**, which requires that **(under 4 (3))** that where an administrative action is likely to adversely affect the rights or fundamental freedoms of any person, the administrator shall give the person affected by the decision an opportunity to be heard and to make representation in that regard, notice of a right to a review or internal appeal against an administrative decision where applicable amongst other rights.

44. In view of the aforesaid, I find the action by the 1<sup>st</sup> Respondent to be unreasonable, and completely irrational. It is clear when the petitioner first applied for clearance the 1<sup>st</sup> Respondent, while knowing the petitioner was a graduate of Busoga University, rather than refusing his application there and then, instead directed him to provide further documents and make payments for the exercise. The petitioner was further made to sit pre-bar examination. The Respondents by administering the pre-bar examination and writing a letter to the Petitioner confirming passing the pre-bar examination justified the petitioner’s legitimate expectation to be admitted to take ATP Training.

45. To that extent, I find that the petitioner’s petition is merited and I proceed to make the following orders: -

***a) A declaratory order BE AND IS HEREBY ISSUED declaring that the Petitioner has been discriminated by the Respondents by violating, denying and breaching his right not to be discriminated as enshrined under Article 27 of the Constitution of Kenya, 2010.***

***b) A declaratory order BE AND IS HEREBY ISSUED declaring that the Petitioner’s rights and fundamental freedoms enshrined under Articles 10, 25(a), 28, 27, 40, 43(10) (f), 47, 48 and 50 of the Constitution of Kenya have been denied and violated by the Respondents.***

***c) A declaratory order BE AND IS HEREBY ISSUED that the Respondents have violated the Petitioner’s right to education, right to be heard and freedom from discrimination.***

***d) An order BE AND IS HEREBY ISSUED in the nature of Certiorari to bring to this Court for purpose of quashing the decision of the 1<sup>st</sup> Respondent contained its letter dated 4<sup>th</sup> March 2019.***

***e) An order BE AND IS HEREBY ISSUED in the nature of Mandamus to compel the 1<sup>st</sup> & 2<sup>nd</sup> Respondent to unconditionally admit the Petitioner for Advocates Training Programme for 2020/2021 academic year***

***f) Declaration BE AND IS HEREBY ISSUED that the Petitioner’s qualifications for admission for ATP is only subject to the provisions of the law and Regulations which existed at the time of his admission and completion of his LL.B program and for avoidance of doubt Council of Legal Education Act, Cap 16A and THE COUNCIL OF LEGAL EDUCATION (KENYA SCHOOL OF LAW) REGULATIONS, 2009(Legal Notice No.169 of 2009).***

***g) An order BE AND IS HEREBY ISSUED for General damages as against the 1<sup>st</sup> Respondent for subjecting the Petitioner to psychological torture, anguish, suffering, mental torture and breach of the Petitioner’s constitutional rights and fundamental freedoms and loss of opportunities as at Kshs.80,000/= against 1<sup>st</sup> Respondent.***

***h) An award of Kshs.20,000/= as exemplary damages to the Petitioner for violation and breach of his constitutional rights and fundamental freedoms to be borne by the 1<sup>st</sup> Respondent.***

***i) Costs of the Petition awarded to the Petitioner against the 1<sup>st</sup> Respondent.***

Dated, signed and delivered on 5<sup>th</sup> day of March 2020.

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J. A. MAKAU

**JUDGE**